IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11737 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESH MANGALBHAI KAHAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/02/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Challenge has been made by petitioner - Maheshbhai Mangaldas Kahar, detenu, at present detained at Porbandar Jail, Porbandar, by this petition under Article 226 of

the constitution to the order dated 25.9.2000 of the Police Commissioner, Vadodara City, Vadodara, under which he was ordered to be detained as a `bootlegger'.

#. Manifold contentions have bene raised by learned counsel for the petitioner challenging the propriety, correctness and legality of this order but as this petition deserves acceptance only on one ground, no need to refer to all those contentions, consider and record findings thereon.

#. It is contended that the detaining authority verified the privileged statements of the witnesses on 25th September, 2000 and on the very day, the order of detention of the petitioner has been made. In his submission this is a matter where there is total non application of mind of the detaining authority in this case. In all statements of three witnesses were recorded but all were verified on 25th September, 2000. So what the learned counsel or the petitioner contended that therefore the exercise of powers claiming privilege by the detaining authority re. these statements is not bonafide. Carrying this contention further, it is contended that the detaining authority has not verified the genuineness and correctness of the fear expressed by privileged witnesses in their respective statements.

#. This special civil application was admitted on 20.11.2000. Rule was made returnable on 18.12.2000. The respondents were directed to file detailed reply affidavit in respect to the grounds mentioned in the petition by returnable date. More than two months and 18 days have already passed but none of the respondents has cared to file reply to the special civil application. These factual averments made stand uncontroverted and it has to be taken to be correct. The learned counsel for the respondents has failed to give out any explanation for this action of the detaining authority. It is true that in exceptional cases, the detaining authority may be justified to order for detention of the detenu on the same day on which statement of privileged witnesses were recorded and claim privilege but not as a rule or right. In those cases, the detaining authority where the order of detention has been challenged on this ground, has to furnish the grounds for passing the orders on the same day of detention of the detenu on which the statements of the privileged witnesses were verified. In this case, it is to be stated at the cost of repetition that reply to the special civil application has not been filed and there is no explanation whatsoever to justify this action of the passing of the order of detention on the same day

on which the statements of witnesses were verified. Not only this, the learned counsel for the respondents otherwise also, has failed to show any ground which justifies the detention of the petitioner on the same day on which the statements of the privileged witnesses were verified by the detaining authority from the record of the case also. In the facts of this case, it appears that either the detaining authority is not considering all these aspects and whatever the note put before it, he approved the same and which culminates in the order of detention of a citizen. Second possibility seems to be that the detaining authority deliberately left out lacunas in the order passed so that it may not be difficult for the detenu to get himself released of this detention from the court. This second possibility seems to be more possible as what my experience of one month of dealing in these matters goes. In almost all the detention cases, there are lacunas after lacunas left out and the court is left with no option but to release the detenu. From the matters which have come before this court, it further transpires that these detention orders are passed by the detaining authority only for statistical data so that they may befool people. The authorities want to take credit that that much number of persons were ordered to be detained to maintain the law and order or to curb antisocial activities. But in almost all the cases, serious lacunas are being left and as a result thereof, release order of the detenu is made by the court. It is a different matter that the detaining authority may satisfy people by saying that the court released the detenu. It is unfortunate that live telecast of the court proceedings is not there and the court has not its own media to let the people know how these authorities are befooling them and how they play fraud with this Act. Contrary to it, the authorities have their own media and further opportunity to directly come into contact with people to convey their message to them. Sometime, I feel that some officer from the Law Department should remain present in the court to watch the proceedings of the court and report each and every case to the Chief Secretary of the State of Gujarat so that at least that officer may know how these officers are befooling people and playing fraud with the Act. But it is difficult to keep busy one officer in the court. If the detention orders are passed only for the purpose of having a handsome statistical data and though in all those matters deliberately lacunae are being left and as a result of which the detenu are to be set at liberty, this is certainly an act to befool the people as well as fraud on the Act itself. I asked the Government advocate as well as other members of the Bar more particularly who

are appearing in PASA matters. They informed the court that in more than 90% cases, the detention orders are being quashed and set aside by the court. This if what it is conveyed to the court is correct, then what the court feels and observed aforesaid to a substantial extent is correct.

#. In the result, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 25.9.2000 is quashed and set aside. The petitioner - Maheshbhai Mangaldas Kahar, the detenu, at present at Porbandar Jail, Porbandar, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

.....

(sunil)